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February 28, 2006

Walter D. Cruickshank Acting Director Minerals Management Service Department of the Interior 381 Elden Street MS-4024 Herndon, Virginia 20170-4817

RE: Comments of the New York State Department of Public Service Concerning Alternate Energy-related Uses on the Outer Continental Shelf (RIN 1010-AD30)

Dear Mr. Cruickshank:

Enclosed please find the Comments of the New York Department of Public Service (NYDPS) in response to the Advance Notice of Proposed Rulemaking on the above-referenced topic published in the <u>Federal Register</u> on December 30, 2005. NYDPS welcomes the opportunity to engage in a cooperative dialogue with the Minerals Management Service and other interested State and Federal agencies which will be working to devise a siting and operating program for alternative energy uses of the outer continental shelf.

Very truly yours,

Steven Blow

Assistant Counsel

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UNITED STATES OF AMERICA BEFORE THE DEPARTMENT OF THE INTERIOR Washington, DC

In the Matter of	
Alternate Energy-related Uses on the Outer)	RIN 1010-AD30
Continental Shelf	

COMMENTS OF THE NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE ON THE ADVANCE NOTICE OF PROPOSED RULEMAKING

INTRODUCTION

In an Advance Notice of Proposed Rulemaking (ANPR) regarding the above-referenced subject, the Minerals Management Service (MMS) is seeking comments (by February 28, 2006) on the development of a regulatory program to implement portions of §388 of the Energy Policy Act of 2005 – Alternate Energy-related Uses on the Outer Continental Shelf (OCS).

Specifically, the ANPR requests comments on energy development from sources other than oil and gas and alternative uses of existing OCS facilities. The five major program areas include: access to OCS lands and resources; environmental information, management and compliance; operational activities; payments and revenues; and coordination and consultation. These comments address aspects of the specified program areas, except those concerning payments and revenues, and largely respond to specific questions in the ANPR.

The comments are provided in anticipation of an on-going consultation with affected stakeholder agencies in the State of New York including the New York Department of Public Service (NYDPS). New York State has an adjoining OCS over 100 miles in length. The adjacent upland area of metropolitan New York City and Long Island is an area of high energy

demand, demand which continues to grow at a brisk pace. Currently, one major offshore underwater electric transmission facility (from New Jersey to the south shore of Long Island) is under construction, and two offshore Liquefied Natural Gas terminals are proposed in the area. The proposal by Florida Power and Light and the Long Island Power Authority to develop an offshore wind energy park to provide 140 Megawatts of electric power to the electric grid is currently under an early stage of review by the MMS. The number and scale of off-shore projects in and around New York waters are growing; they will continue to grow as the energy demand increases and inter-connected electricity and gas markets continue to develop. The continuing need for orderly, comprehensive review of off-shore energy-related projects is evident.

Access to OCS Lands and Resources

The assessment of existing uses should entail detailed mapping and analysis of known underwater facilities including power and telecommunications cables, gas transmission pipelines, sources of sand, outfall facilities, and related features. Documentation of rights-of-way attendant to such facilities should be developed. Identification of commercial and recreational fishing and boating uses will require outreach efforts by the agency to users of off-shore uses and interest groups.

The balance between existing and new energy uses will entail a multi-dimensional analysis of uses, impacts, available alternatives, and mitigation opportunities. An opportunity for collaborative problem-solving efforts among interested stakeholders should be included in the regulatory program being developed.

Criteria for decision-making should include a full assessment of environmental impacts directly and indirectly related to overall project development, consideration of alternatives at

both off-shore and upland locations, the no-build alternative, and other factors as specified in National Environmental Policy Act (NEPA) regulations. Impacts to the environment and the interconnected electric system should be minimized.

Environmental Information, Management and Compliance

The New York Public Service Commission (NYPSC) is the decision-making body in the NYDPS with jurisdiction, inter alia, to monitor, enforce and administer compliance with the New York Public Service Law (NYPSL), authorize the siting of gas and electric transmission lines in New York, and ensure that gas and electric corporations, as well as those entities authorized to construct and operate transmission lines, provide safe, adequate and reliable service. In carrying out its responsibilities, the NYPSC must often balance competing considerations. For example, NYPSL Article VII requires the need for transmission lines to be balanced against their adverse environmental impact. As part of this balancing, the NYPSC requires that detailed environmental and engineering information be provided concerning proposed transmission lines and that alternatives thereto be considered.

NYDPS urges that the program developed by MMS require detailed information from applicants concerning proposed projects. The specified information should include a careful assessment of the advantages and disadvantages of proposed projects as compared to alternatives.

In addition, MMS should consider documentation of environmental baseline information before granting energy leaseholds. This effort could be undertaken by MMS or under its guidance, utilizing best available technology, remote sensing and on-site sampling and the

¹ NYPSL §§ 3, 4, 5(1)(b), 66(1),(2),(5) and 121(1).

² NYPSL §126(1).

NYPSL §122(1), as implemented by 16 NYCRR Parts 86-88.

detailed assessment of a full range of environmental attributes and conditions. Establishment of baseline data will enable identification of potential areas for development, and exclusion of critical areas because of habitat or cultural sensitivity, or incompatibility of existing uses with the development of alternative renewable energy capability. Since there are a variety of potential renewable energy sources at any site, the compatibility of resource development at a site may depend on the site character. For instance, large scale wind energy development in an area of significant aesthetic resources may be less compatible than low-lying wave or underwater current turbine technologies.

The goals and objectives of monitoring for environmental management should include the development of detailed operational information to enable the adaptive management program, as described in the ANPR, to minimize impacts to natural and cultural resources and other uses. Results of early monitoring will be instructive in both tailoring operational requirements at the monitored location to minimize impacts and devising additional siting and management criteria for subsequently developed sites. On the basis of our experience, NYDPS believes that compliance with environmental and other requirements can best be achieved by a combination of approaches employing company and contract personnel, environmental inspectors from the supervising agency and independent inspectors.

Operational Activities

Electric generating facilities on the OCS give rise to distinct concerns. Obviously, when a generating facility is located in a state and is connected to the electric grid by a transmission line, the owners of the generating facility and transmission line are subject to a defined set of reliability standards, as well as requirements contained in tariffs filed with the Federal Energy Regulatory Commission (FERC) by an independent system operator. By contrast, the situation

is not as clear when a generating facility is located on the OCS. NYDPS urges that, when a generating facility on the OCS is connected to the electric grid of a state, the owners of the generating facility and connecting transmission line be made subject to the reliability standards and other requirements applicable in that state, as a condition for using OCS lands and resources. In this way, all the owners of generating facilities and transmission lines that are connected into the electric grid of a particular state will be treated alike and the electric system reliability can be appropriately assured.

One safety issue that warrants attention is the burial depth of high voltage underwater electric cables, as well as the protection of cables from interfering activities such as vessel anchor dragging. Appropriate criteria for burial and separation from other facilities are available for State waters and upland areas.

Operational activities should be monitored carefully throughout a facility's lifetime.

Monitoring should be required during construction, testing and operation. Annual inspection during facility operation is recommended, with more frequent inspections as a facility approaches the end of its projected useful life. MMS should consider the establishment of reporting criteria, whereby a developer would provide documentation of its compliance efforts as a part of the Permit requirements. Compliance inspections by MMS could confirm reports and investigate anomalies or violations as appropriate. Ongoing reporting of self-monitoring and facility management efforts by developers should be required through the life of a facility. Coordination and Consultation

The NYPSC is the single agency in New York with jurisdiction to require a certificate for

the construction and operation of gas and electric transmission lines above specified thresholds.⁴

⁴ NYPSL §§ 121(1) and 130.

Developers of electric generating facilities on the OCS that desire to connect their facilities to the electric grid in New York at voltages of 125 kV or more must do so by means of a transmission line authorized by the NYPSC.⁵ Therefore, the NYDPS is one of the agencies with which MMS should consult in the development of the program at issue, and if any application is filed for an electric generating facility on the OCS or an associated transmission line adjoining New York. Mandatory procedures for coordination and consultation with interested and affected parties, to the extent they go beyond those required pursuant to NEPA, should be codified in the regulations

CONCLUSION

NYDPS appreciates the opportunity to provide comments on the regulatory program being developed by MMS. We are sure that the foregoing comments will receive careful consideration.

Respectfully submitted,

Dawn Jablonski Ryman, General Counsel

By: Steven Blow, Assistant Counsel NYS Department of Public Service

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Dated: February 28, 2006

being developed by MMS.

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NYPSL §120(2)(a). In addition, if the proposed transmission line is ten or more miles long, the NYPSC must authorize it if its design voltage is between 100 kV and 125 kV.